

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

6 JORY MERRITT, and all similarly)
7 situated employees,) Case No. _____
8)
9 Plaintiff,) CLASS ACTION ALLEGATION
10)
11 v.) COMPLAINT
12)
13 CASCADE CORPORATION,) Unpaid Overtime Wages (29 USC §207)
14 an Oregon corporation,) Liquidated Damages (29 USC §216(b))
15) Statutory Penalty (ORS 652.150)
16 Defendant.)
17)
18)

19 Plaintiff alleges:

GENERAL ALLEGATIONS

21 1.

22 At all material times herein, Defendant Cascade Corporation (hereinafter
23 "Defendant") was and is a corporation, incorporated within the State of Oregon, and
24 conducting regular and sustained business activity in Multnomah County, Oregon.

25

At all material times herein, Defendant was an employer subject to the requirement of the Fair Labor Standards Act (FLSA), 29 USC §§201, et seq., to pay overtime premium pay to its non-exempt employees, for all hours worked over 40 in any

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1 given workweek, at 1.5 times the employee's regular rate of pay, on or before the next
2 regular paydate for the pay period in which the overtime work was performed.

3 3.

4 At all material times herein, Plaintiff Jory Merritt (hereinafter "Plaintiff") was
5 employed by Defendant as a non-exempt machinery operator, from February 25, 2019
6 until voluntary resignation from employment, with two-weeks' prior notice to Defendant,
7 effective July 16, 2019.

8 4.

9 While employed by Defendant, Plaintiff was paid bi-monthly salary wages of
10 \$1,667.50, together with shift-differential wages of \$.94 per hour, for a combined regular
11 pay rate of \$20.18 per hour. Plaintiff's regular work compensation also included non-
12 discretionary monthly bonus wages ("Productivity Based Incentive"), with the amount
13 based on the productivity and safety of himself and his co-workers.

14 5.

15 While employed by Defendant, Plaintiff and all similarly situated employees were
16 at all times systematically underpaid their earned overtime premium wages, in violation
17 of the FLSA, because of Defendant's failure to include both shift-differential wages and
18 non-discretionary bonus wages when calculating the employees' regular rate of pay, on
19 which the overtime premium wage rate is based.

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1 6.

2 While employed by Defendant, Plaintiff and all similarly situated employees were
3 at all times systematically paid overtime premium wages late (after the next regular
4 paydate for the pay period in which the overtime hours were worked), in violation of the
5 FLSA.

6 * * * * *

7 **GROUND FOR CLASS ACTION SUIT**

8 7.

9 Plaintiff brings this claim as a class action, pursuant to FRCP 23, on behalf of all
10 similarly situated employees of Defendant.

11 8.

12 Similarly situated employees include all non-exempt employees, employed by
13 Defendant during the last three years, who worked overtime hours and were paid less
14 overtime premium wages than owed, because of Defendant's improper method of
15 computing overtime premium wages without inclusion in the regular rate of pay, either
16 shift differential wages or non-discretionary bonus wages earned by the employee.

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1 9.

2 Similarly situated employees also include all non-exempt employees, employed
3 by Defendant during the last three years, who worked overtime hours and were paid
4 overtime premium wages late, one paydate after the regular paydate for the pay period in
5 which the overtime hours were worked.

6 10.

7 The members of the class are so numerous that joinder of all members is
8 impracticable. Upon information and belief, the members of the class number at least
9 100, and possibly exceed 500.

10 11.

11 The disposition of the plaintiffs' in a class action will provide substantial benefits
12 to the parties, proposed class members, and the Court. There is a well-defined
13 community of interest in the questions of law and fact involved in this case. Questions of
14 law and fact common to the members of the class that predominate over questions that
15 may affect individual class members include Defendant's systematic illegal payroll
16 method ,which results in: (a) improper shortage of earned overtime premium wages for
17 all class members; and (b) systematic illegal late payment of earned overtime premium
18 wages for all class members.

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1 12.

2 Plaintiff's claims are typical of those of the class. Plaintiff claims for the same
3 unpaid overtime, and resulting liquidated damages from both the unpaid and late-paid
4 overtime wages, as do all class members, resulting from Defendant's systematic and
5 illegal methods of calculating and paying earned overtime wages.

6 13.

7 Plaintiff will adequately protect the interests of the class, has no conflicts of
8 interest, and has retained legal counsel fully capable of representing the plaintiffs and the
9 proposed class. A class action is superior to other available methods for the fair and
10 efficient adjudication of the controversy.

11 * * * * *

12 **FIRST CLAIM FOR RELIEF**
13 **(Unpaid Overtime Wages – 29 USC §216(b))**

14 14.

15 Plaintiff is owed unpaid overtime premium wages, in the amount of \$580.88,
16 pursuant to 29 USC §207.

17 15.

20 Plaintiff is entitled to an award of reasonable attorney fees, pursuant to 29 USC
21 §216(b).

22 16.

23 The Court has original jurisdiction over this claim, pursuant to USC §1331.
24

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1 * * * *

2 **SECOND CLAIM FOR RELIEF**
3 **(Liquidated Damages – 29 USC §216(b))**

4 17.

5 Plaintiff is owed liquidated damages in an amount equal to all unpaid overtime
6 wages, which amount is \$580.88, pursuant to 29 USC §216(b).
7

8 18.

9 Plaintiff is owed liquidated damages in an amount equal to all late-paid
10 overtime wages, which amount is \$1,527.89, pursuant to 29 USC §216(b).

11 19.

12 Plaintiff is entitled to an award of reasonable attorney fees, pursuant to 29 USC
13 §216(b).

14 20.

15 The Court has original jurisdiction over this claim, pursuant to USC §1331.
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THIRD CLAIM FOR RELIEF
(Statutory Penalty – Late Payment of Final Wages - ORS 652.150)

21.

4 Pursuant to ORS 652.140(2)(a), all earned wages were due to Plaintiff on July 16,
5 2019. Despite receipt of written notice of unpaid wages from Plaintiff on August 1,
6 2019, Defendant willfully failed to pay Plaintiff's final wages, in the amount of \$48.54,
7 until August 30, 2019.

22.

9 Plaintiff is entitled to statutory penalty wages in the amount of 30-days' pay,
10 which is \$10,605, together with prejudgment interest thereon at the legal rate of 9% per
11 annum, from August 15, 2019 until final judgment is entered herein, pursuant to ORS
12 652.150, for Defendant's failure to pay plaintiff all earned wages in a timely manner
13 following termination of employment as required by ORS 652.140.

23.

15 Plaintiff is entitled to an award of reasonable attorney fees pursuant to ORS
16 652.200(2).

24.

18 The Court has supplemental federal jurisdiction over this claim, pursuant to USC
19 §1337(a).

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1 * * * *

2 WHEREFORE, Plaintiff Jory Merritt hereby prays for a Judgment against
3 Defendant Cascade Corporation, as follows:

4 **1. First Claim for Relief (Unpaid Overtime Wages - 29 USC §207):**

5 For unpaid overtime wages in the amount of \$580.88.

6 **2. Second Claim for Relief (Liquidated Damages - 29 USC §216(b)):**

7 (a) For liquidated damages in the amount of all unpaid overtime wages, which amount is
8
9 \$580.88, pursuant to 29 USC §216(b); and

10 (b) For liquidated damages in an amount equal to all late-paid overtime wages, which
11 amount is \$1,527.89, pursuant to 29 USC §216(b).

12
13 **3. Third Claim for Relief (Statutory Penalty Wages – ORS 652.150):**

14 (a) For statutory penalty wages per ORS 652.150, in the amount of \$10,605, together
15 with prejudgment interest thereon at the legal rate of 9% per annum, from August 15,
16 2019 until final judgment is entered herein; and

17 (b) For reasonable attorney fees, pursuant to ORS 652.200(2).

18
19 **4. For costs and disbursements incurred herein.**

20
21 DATED this 22nd day of October, 2019.

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